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Research Article

Challenges of being a prosecutor in Turkey: Stuck between professional and social identity

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Abstract

The increasing tension between professional identities shaped by the institutions that individuals feel attached to and their ability to construct social relations is a ongoing social phenomenon. This fact becomes more complicated for public service professions based on *work on the other*, because these kinds of professions require strong skills of sociability and the professionals have a responsibility to represent the political institutions that underline the separation of state and civil society. The judicial institution that performs the adjudication function of the state through juridical agents serves as model for revealing the connections between judicial professional identity and its barriers in judicial agents' social relations. This paper aims to answer the following question: "How do the professional identity of judicial agents affect the construction of their social relations?". This research is based on twenty semi-structured interviews conducted in Turkey with prosecutors who are not only representatives of the state authority but also judicial agents who have a central role in the criminal justice system. Our analysis reveals that prosecutors adopt their own strategies of identity (outside the institution) through specific working conditions, behaviour patterns imposed by their institution and the image of the profession. Thus, the identity strategies of prosecutors trigger an isolation process characterized by absence of trust, tendency to construct short term and reserved relations, and uprooting from one's cultural origins. In conclusion, the misconduct of social relations of prosecutors causes the legitimization and the reproduction of the dominant components of professional identity which penetrates and dominates all the social relations of prosecutors and their families.

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Anahtar sözcükler: adli meslekler, mesleki kimlikler, savcılar, adli alan.

Öz

Bireylerin çalıştıkları kurumlar tarafından şekillendirilen mesleki kimlikleri ile sosyal ilişkiler kurma yetenekleri arasındaki artan gerilim, süregelen bir toplumsal olgudur. Bu durum kamu meslekleri açısından daha karmaşıktır, çünkü bu meslekler bir yandan güçlü sosyallik becerileri gerektirirken diğer yandan devlet ve sivil toplum ayrımını vurgulayan siyasi kurumları temsil etme sorumluluğunu taşır. Devletin adalet işlevini yerine getiren yargı kurumu, bu çatışmayı gözlemlemek açısından önemli bir model sunmaktadır, çünkü yargı profesyonellerinin mesleki kimlikleri temel olarak bağımsızlık ve tarafsızlığa dayanır. Bu makale adli profesyonel kimliğin yargı profesyonellerinin toplumsal ilişkilerinin inşasını nasıl etkilediğini araştırır. Bu araştırma, hem devlet otoritesini temsil eden hem de ceza adaleti sisteminde merkezi bir role sahip olan adli aktörlerle, yani Cumhuriyet savcılarıyla yapılan yirmi yarı yapılandırılmış görüşmeye dayanır. Araştırma sonuçlarına göre, savcıların kendilerine has çalışma koşulları, bağlı oldukları kurumun dayattığı davranış kalıpları ve adalet adına korumaya çalıştıkları mesleki imajları onları toplumsal ilişkilerden uzak tutar ve kendilerini toplumdan soyutladıkları bir yaşama yöneltir. Savcılar mesleki kimlikleri nedeniyle kronik güven eksikliği çekerler, kısa vadeli ve mesafeli ilişkiler kurma eğilimi gösterirler ve sık yer değiştirmeleri nedeniyle kök salamamanın acısını çektikleri bir soyutlanma süreci yaşarlar. Sonuç olarak, mesleki otoritelerinden dolayı kurdukları ilişkilerin kötüye kullanılmasından yoğun şüphe duyan savcıların mesleki kimlikleri hem kendilerinin hem de aile bireylerinin tüm sosyal ilişkilerine nüfuz eder ve yeniden üretilir.

1. INTRODUCTION

The identity is a construction process in which individuals seek to build coherence and continuity between present and past experiences. However the dynamism, heterogeneity and simultaneity of this process constantly produce paradoxical experiences that an individual has to deal with and invent new identical strategies. In this lifelong process, the professional life becomes one of dominant components which mainly contributes to the construction of identity, especially in legal field framed by modern law.

The increasing tension between professional identities shaped by the institutions that individuals feel attached to and their ability to construct social relations is a recent social phenomenon. This fact becomes more complicated for public professions based on *work on the other*[1] (Dubet, 2002:24), because these kinds of professions require strong skills of sociability and the professionals have the responsibility to represent the political institutions that underline the separation of state and civil society. The judicial institution that performs the adjudication function of the state through juridical agents serves as a model for revealing the connections between judicial professional identity and its barriers in social relations of judicial agents.

This paper aims to answer the following question: "How do the professional identity of judicial agents affect the construction of their social relations?". This research is based on twenty semi-structured interviews conducted between July 2012- March 2013 in Turkey (Aytemur Nüfusçu, 2013) with prosecutors who are not only representatives of the state authority but also judicial performers who have a central role in the criminal justice system. The first part of the paper outlines the construction of professional identity through the narratives of prosecutors interviewed. The second part draws on the results of adjusting their professional identity to their social life. The central argument is the professional identity and the personality of judicial agents formed by social relations interdependently determines forms and contents of the performances of the legal professions.

2. PROFESSIONAL IDENTITY IN THE JUDICIAL FIELD

The professional identity is described by the sense of belonging to a profession resulting from a socialization process and the compliance with collective norms of this professional group. (Fray & Picouleau, 2010) In the legal field, the socialization process is guaranteed firstly by law school that inculcates to students the principals of modern law, legal language and professional codes based on the social and academic hierarchy (Çağlar Gürgey, 2014:98). Bourdieu (Bourdieu, 1986:10) emphasizes that coherent appearance of the modern law –which excludes in theory the lack of rationality between the juridical texts and practices- empowers the legal professionals and non-accessibility of its language by the ordinary people feeds domination relations in the society.

The practice of the profession as a prosecutor or a judge orients their socialization process to public space in which these legal actors represent public authorities in order to establish and/or maintain the order. Thus, these actors are committed to protect the image of the judicial institution as an important part of the state myth that is characterized by its unitary and monolith aspects, autonomy, integrity and compatibility. (Migdal, 2001:22) These features of state myth also operate in the institution of justice and prosecutors construct their professional identity through the idealization of legal and public dimensions of their profession.

2.1. The Prominence of Independency and Impartiality

The professional identity of prosecutors concerns first of all legal and judicial elements which reflect idealized concepts of modern law. In order to understand their perspectives on their profession, we asked to the prosecutors that what are the most important properties of an ideal prosecutor. They referred to the practice of two basic terms of modern law: independency and impartiality. According to them, the power and superiority of law and its agents arise from these two principles as well as from their conviction on the fact that the law brings the justice by being independent and impartial. Thus,

[1] "Work on the other" has been translated from French into English. The original version of this concept is used as "travail sur autrui" which is essentially based on public service in the frame of taking care of others by publice service profesionnals. François Dubet shows that this type of care continues through socialization and triggers a social transformation of individuals.

these two terms of justice which already are questioned in a controversial way in the judicial field, are seen legal necessities while performing "the duty of seeking the justice".

In the face of this cause and effect relation between law and justice, Derrida reveals that justice is not an equitable phenomenon in itself, that it cannot be calculated, that it must be carried out urgently, but also that a purely equitable decision cannot be made because it always remains in the future. (Derrida, 2010:69-70) For this reason, the conflict in our daily lives is between the expectation of law to achieve justice and the expectation of justice to be achieved by the practice of law and that particular conflict opens the way for questioning the concrete and institutional judicial system, because the conceptual conjunction of the law and justice seems to be disconnected from social reality and domination relations in the society.

Critical legal studies thinkers[2] also criticize the positivist and formalist idea of law, emphasizing that law is strictly political (Akman, 2012:1287) and cannot be considered as a totality which is separate from economic, cultural and social relations. According to Hunt, the most important point where the critics differ from orthodox Marxist thought is that they shift their focus from economic relations to political and cultural relations and open up the issues of ideology and legal consciousness to discussion.(Hunt, 1986:11) In this respect, for many of the critics, law functions as an ideology that shapes human behaviour and the choices of professionals who implement legal procedures shape the prevailing accuracy. (Minda, 1989:619) According to the critics, although the law creates the effect of eliminating the deficiencies in the concept of justice and re-establishing justice, in fact, it is instrumentalized to serve the interests of the sovereigns and legitimizes the existing legal system in every attempt to satisfy justice. (Akman, 2012:1283) Therefore, while critical legal studies consider the conceptual conjunction of law-justice as an illusion, they propose the relation of law-politics (and of course cultural and social relations too) instead, and think law as a mechanism that both masks and reconstructs social conflicts for power.

In this frame, the ideal of independency and impartiality of law presented by liberal legal model is contested and critical legal studies thinkers oppose the formalism of the law with the «indeterminacy thesis» which basically argues that law is ambiguous and inconsistent, since the legal forms and methods can lead to more than one conflicting result in similar cases.(Aktaş, 2006:98) Therefore, the outcome is left to the discretion of legal professionals (prosecutor in the criminal charge process and judge in the decision process) who will carry out the legal reasoning. Thus, some of the critics do not see legal reasoning as a logical process in which legal professionals practice the law in an impartial, independent and predictable manner. On the contrary, legal reasoning is seen as a system of techniques produced by the dominant legal system and followed by legal professionals behind the concept of impartiality of discretion.(Aktaş, 2006:104)

What does it mean that prosecutors still consider these two principles, which they claim as the most important part of their professional identity but which we cannot separate from social power relations, as deontological and individual responsibility? The appropriation of these two principles can be explained in a pragmatic way where prosecutors construct their comfort zone on the idealistic part of the law. Even if these two principles cannot be practiced in real life, meaning prosecutors cannot be independent and impartial in their judicial practices, they feel the exigence of appearing that way, because this appearance protects them from interventions on the one hand and reinforce their privileged professional positions on the other. In other words, this fact triggers the need to control the attitudes of others and themselves in the public space and to restrain social relations both inside and outside the institution in order to keep the "necessary distance".

2.2. Social Traps of Public Service

Beside the "necessary" distance to maintain the image of the profession, prosecutors' professional identity of prosecutors concerns necessarily the management of face-to-face relations with citizens because of the nature of public service. The relationship established between the

[2] Duncan Kennedy, David Trubek, Richard Abel, Mark Tushnet, and Roberto Mangabeira Unger are some of the important thinkers of critical legal studies. These thinkers consider the legal system as a process in which social inequalities are reproduced. However, we do not mention of their works one by one, because the conceptual and methodological differences between the critics are beyond the scope of this study.

prosecutor representing the justice function of the state and the citizen representing the civil society is important in terms of producing the state image in daily judicial activities, since the social dimension of the state image creates a distinction between public and private, that is, the state and its subject, and this distinction places the state in a superior status than its subject.(Migdal, 2001:17)

According to Dubet, people working in work on the other (Dubet, 2002:24) on behalf of the state have a charismatic authority that derives its source from a sacred legitimacy. This legitimacy brings them the technical and social power in terms of being carrier and transmitter of institutional principles. Therefore, the prosecutor - as the employee and representative of the justice institution- is responsible for establishing a bond and playing intermediary role between institutional legal power of state and the citizen in the frame of bureaucratic administration of justice (Kilim Ergüzeloğlu, 2013:85). This fact of representativeness provides the prosecutor with the authority vis-à-vis citizens as well as the duty of passing on judicial norms and values of the institutions through their face-to-face relations.

However, Migdal draws attention to the plurality, diversity and inconsistency of the practices by stating that the practices create competition in terms of state image and have the potential to damage the state myth. (Migdal, 2001:19) As per the results of the field research, the prosecutors adopt three behaviour patterns which push the limits of ideal characteristics – independency and impartiality- of their profession. Firstly, the authoritarian behaviour model basically leans on attitudes that reinforce the prosecutor's ascendant position vis-à-vis the citizen. This hierarchical relationship between the prosecutor and the citizen brings the imposition in terms of legal tactics, bureaucratic functioning and social norms with itself.

Thus, the authoritarian attitudes emphasize instructive role of prosecutors over the citizens as well as the role of "putting them in their place". This instructive role, which is in harmony with the bureaucratic organization model of the Republic, includes guiding citizens about judicial procedures and giving advice to them in various disputes encountered. In his top-down relationship with the citizen, the prosecutor positions the citizen in an inferior place and adopts a protective attitude in line with the indoctrination of the values of the Republic. This elitist position manifests, in an aggressive way, in the role of "putting them in their place" which goes up to shouting, insulting and even physical threats in some cases. Beyond their independent and impartial position, prosecutors experiment their superior and omnipotent role as legitimate.

The third behaviour pattern is "the distance relationship" which is shaped by the concern of remaining impartial and independant while managing relations wtih the citizens. In this type of relationship, the prosecutors refrain from establishing any close relationship with the citizen, neither instructive nor tolerant. They explain this distance with the professionalism as follows:

"*Because of the nature of the profession, you have a certain stance. There is an expression like 'court wall' among the people. You must always be cold and distant. In this way, you actually stand at an equal distance from everyone. That makes it a little bit more difficult for you personally.*"[3]

Although not authoritarian, this behavior which is keeping the distance with the citizens and trying to establish the state's image with the principles of independence and impartiality focuses on the files and the fast and efficient functioning of the judicial process by minimizing the relationship with the citizen. However, this distance between the prosecutor and the citizen sometimes brings the risk of over-objectivizing the case with it. Therefore, the possibility of missing specific individual factors to each case inevitably arises for the sake of the principles of equality, impartiality and independence.

Thus, the professional identity of prosecutors is formed by the conflict between their appropriation of idealistic version of legal principles and theirs contradictory experiences while practicing their profession. On one hand prosecutors defend their principles which encourage their neutral and distanced position in both their professional and private life lives. On the other hand the sociability capacity of their profession forces them to represent the state in their face-to-face relations by guiding citizens and imposing their authority on the other citizens. This conflictual construction of their professional identity creates consequences on their social relations as well as their private life.

[3] Interviewee 16, 13.11.2012.

3. AN ISOLATION STORY

As a result of this tension between two dimensions of professional identity, the prosecutors adopt behavioural patterns in which the professional identity dominates the forms of their social interactions, because they cannot yet manage both the professional and social identity in an approved way of judicial institution. Therefore, there is no more a separation between their professional and private life lives and prosecutors are getting involved in an isolation process in their private life in order to keep necessary distance with others. This isolation process is basically marked by three elements of their professional experiences.

3.1. Doubt As a Way of Life

As a consequence of professional experience, the prosecutors acquire the strong feelings of doubt which are nourished by their main judicial work. As a representative of prosecution, the prosecutor manages the investigation and makes accusation based on evidences. In an interview, the prosecutor expresses the need to his emotion of doubt as follows:

"*The state pays us for that we suspect. For example, we see someone who is lying on the ground. We immediately begin to think if someone hit him/her, killed him/her, where he ran away, etc. Maybe only his/her blood pressure dropped and he/she lost.*"[4]

The criminal side of their job which is ordinary for them triggers the feelings of doubt even in their social life lives. They directly transfer the feeling of doubt to their social interactions and it causes the spread of suspicion in their whole life. An interviewer explained his challenge as follows:

"*[This job] limits the social life. This limitation is necessary for our society. Western societies is 'over this'. If you offer a cup of coffee to someone, no one finds this strange in western societies. But our perception is that the prosecutor sold the file. So we isolate ourselves from society*."[5]

Pointing out the conflict between protecting professional identity and positioning himself in the social life, this prosecutor considers that the other party of a social relation could be the potential "suspect" who can expect a favour or a privilege from the prosecutors. The comparison he made between the culture of western societies and of his society is also interesting to understand his hierarchical perspective that puts the responsibility on the citizens. Since the prosecutor has concerns, even fears about giving the image of establishing relations based on self-interest, he keeps his distance in his relationships or avoids constituting any relationship altogether. Their fear of giving someone a privilege also comes with the concern of being privileged due to their professional and social position.

Besides the personal experiences of the prosecutors, their family members also suffer from this necessary isolation process, since it automatically establishes the rules to respect in the public space. For example, an interviewer explained the status of his children in the school as "a prosecutor's children":

"[Our children] they behave carefully because they're the children of the prosecutor. Cheating is a student's right. But if you're known as prosecutor's child, it's different. [If you cheat in the test], they say "Did you do too?"[6]

Thus, prosecutor's children are not allowed to have any privileges or to make mistakes in the public space, because it is expected from them to maintain the professional images of their parents. Family members pursue a way of life which excludes all kinds of doubt on their educational, professional or private life because of their mandatory contribution to the reproduction of parents' professional identity.

3.2. Isolating Effects of Working Conditions

The working conditions of a prosecutors imposed by judicial institution have effects on their isolation process, because they are not as easy as it is thought, especially in the first years of the profession. To summarize working conditions of prosecutors briefly, we can consider that they start their carrier in rural areas of country where they face the poverty and terror and then they have to

[4] Interviewee 11, 20.09.2012.
[5] Interviewee 6, 18.02.2013.
[6] Interviewee 15, 12.09.2012.

change their working places periodically as modern professionals who have to adopt a nomadic life style.

The rural experiences of prosecutors in the earlier period of their careers are definitely significant in nourishing the isolation process. Due to the size of territory where they worked, the status of prosecutors is known and highly respected in the frame of the social and institutional structure of rural regions. Compared to a city, the authority of a prosecutor is further recognized in such a small area and his presence is considered equivalent to the existence of the state. For this reason, the expectations of the people from the prosecutors increase and they frequently visit the courts in order to take advice or to accuse. The social dimension of the professional identity stands out in these regions where the social relations are constructed in accordance with the community rules.

The authority of prosecutor in rural regions triggers the fact that they are kept under surveillance by everyone. An interviewee resumes his experience as follows:

"*In small towns everyone knows you. You think this even while you are shopping. Like when you meet a doctor you show where it hurts in your body, when they meet me they ask the court issues. (...) It is difficult when it is about one of the cases before you. So you cannot build an amicable relationship with anyone. They see you as a party. It's better to be isolated. You look fairer.*"[7]

The fragility of their professional image is also accentuated by the impossibility of maintaining the separation between professional and private life. His concerns about being abused in their social relations drive him –like other prosecutors- to establish limited relations with the locals and to restrict his entourage to the bureaucratic notables (judge, prosecutor, police, soldier, district governor, etc.) of the region. In case of living in gated communities allocated by the Ministry of Justice, the prosecutors have almost no physical or social connections with locals except the courthouse.

Another characteristic of rural regions and its influence on the social relations of the prosecutors is described by them as the absence of physical and medical infrastructure. An interviewee described his work experience of in a town called as deprivation (revoke) region as follows:

"*My friends were calling me a few times to ask about my situation. I was replying them by saying 'I'm in the depths of hell'. This really was to the bottom of hell. There was no phone, no electricity. The roads were blocked due to snow in the winter. We couldn't even find bread.*"[8]

Thus, his definition reminds not only the social isolation, but also physical isolation reinforced by the absence of material conditions. He draws a portrait of a judicial agent who was left to his fate along with those who live there. Under these circumstances, the prosecutors who lost their connection with their institution are exposed to dual process of isolation from social interactions and institutional supports. However, they have more institutional and military support in "terrorism zones" (described by prosecutors with these words) which impose security problems for prosecutors and their families. The necessity of protection from terrorist attacks because of the fact that the agents of the state are used to be target for the militants, they become secluded from the outside and they lose their confidence to locals who potentially could aid in difficult moments.

Another working condition which has effects on isolation process is the necessity of change of working place every 2-3 years. This moving system provokes the absence of trust in the relations due to the absence of establishing long term relationships for the prosecutors and their family members. A prosecutor interviewed expresses the trust issues while moving out as follows:

"*When you are appointed, you start from scratch. You can't share your privacy with anyone. You stay in the position of observer. You collect information about colleagues. The new friendships begin at least after six months. Then, the research for a new place of appointment begins. You miss the place where you have been appointed previously, when you are appointed elsewhere. Our house is on our back like a turtle.*"[9]

[7] Interviewee 5, 05.11.2012.
[8] Interviewee 3, 05.11.2012.
[9] Interviewee 10, 13.02.2013.

The vicious circle in which the forced mobility blocks the establishment of trust relationship between colleagues triggers the tendency to construct short term and reserved relations. Besides the trust issues, the appointment process includes the temporariness of social relations already established. Prosecutors explain this fact through the example of their children as follows:

"*Every time, you build relations from scratch. Most officials' children have no childhood friends. They have no sense of hometown. They can't understand the origins of feelings of loyalty, fidelity and constancy.*"[10]

Thus, prosecutor's appointment leads to uprooting from one's cultural origins for their children, because their socialization process is geographically and relationally split up. As prosecutors advance in their carrier, both themselves and their family members get used to live social life in an isolated way and become distant from the social norms.

3.2. The Contribution of Judicial Institution to the Isolation Process

The contribution of the judicial institution to the restriction of prosecutors' social relations is realized by disciplinary rules. The judicial institution tries to maintain the professional norms trough disciplinary rules and doesn't allow the corrosion of the strong image of the profession and its ability to represent the state authority. The most significant example given by prosecutors focused on the hobbies which is important part of one's private life. While a prosecutor interviewed said that his application to Ministry of Justice to play football in amateur league was denied, another prosecutor shared his experience as follows:

"*I should be relaxed to take pictures. For example, we met a group that takes pictures in a region of vacancy. When they asked me 'what is your profession?', I said 'I am a math teacher' to be more relaxed. It is not the same when you say that you are a prosecutor. We all become reserved. The strict rules of profession hinder your hobby. You do not found a relationship in order not to lose the power.*"[11]

The real professional identity of the prosecutor constitutes an obstacle to his social relations. For this reason, the domination of legal profession's image forces the prosecutor to pretend to be like someone else. This extreme example shows that the professional identity nourished by the disciplinary rules has the power to push down the personal identity of a judicial agent. It is possible to diversify the examples for written and unwritten restraints which are to protect the institutional image. As per the testimony of prosecutors, the religious beliefs (Tuna, 2011), political opinion (Karcı, 2019), ethnic affiliations are the other factors to which the institution's disciplinary rules apply. For example, Ali Karcı (2019: 227), prosecutor who didn't hesitate to expose his political attachments with the ultra-nationalist group in the late 1970s, considers that he was appointed on purpose in a village known as "leftist" during the government of Ecevit in order to punish him for his nationalist identity. He describes his experience as loneliness, exclusion of judicial space and dereliction at the institutional level.

4. CONCLUSION: STRATEGIES OF DEALING WITH THE ISOLATION

In conclusion, it is important to underline how the prosecutors deal with the restriction of their social relations by professional identity due to judicial institution. According to the research results, the prosecutors justify this isolation process despite their discontentment of their conditions of life. They think that the isolation process is an inherent component of their profession. In their perspective, they have to normalize and interiorize working and living conditions instead of challenging them. Furthermore, they consider that the isolated way of life is a sacrifice to homeland by referring to the value of public service. To concretize this idea of sacrifice and to show its importance, it's meaningful to cite from the experience of one of my interviewees as follows:

"*As health conditions weren't good, we lost my son in the area where we served. My wife barely survived. I thought I was dying of despair. We stayed there as idealists and patriots. However, it takes your life.*"[12]

[10] Interviewee 5, 05.11.2012.
[11] Interviewee 12, 17.11.2012.
[12] Interviewee 1, 15.02.2013 in Istanbul.

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